Punniyamoorthy a/l Perumal & Anor v Mohd Syahir bin Azhar

HIGH COURT (KUALA LUMPUR) — CIVIL APPEAL NO WA-12BNCvC-16–02 OF 2016
YEOH WEE SIAM J
24 NOVEMBER 2016

Tort — Road accident — Claim for damages — Respondent claimed against appellants for general damages, special damages, interest and cost resulting from injuries suffered during accident between respondent and first appellant — Whether award given by trial judge fair and reasonable

The respondent had filed a claim against the appellants for general damages, special damages, interests and cost resulting from injuries suffered during an accident occurred between the respondent, while riding his motorcycle, and the first appellant, while driving the taxi. The learned sessions judge had decided that the liability of the appellants was 100%, and the quantum for general damages was RM203,000, costs of future surgery was RM11,667 and pain and suffering for future surgery was RM5,000. Dissatisfied with the decision, the appellant filed the present appeal.

Held, dismissing the appellants' appeal on liability and allowing the appellant's appeal in part on quantum for general damages:

(1) Considering the fact that the injury was only 4% of the total body surface area, the award of RM60,000 for right shoulder and flank friction burn injury (total body surface area ('TBSA') 4%) with disabilities was reduced to RM40,000 by the court. Relying on the Compendium of Personal Injury Awards, revised as on 17 April 2014, the court ordered that the award of RM30,000 for right second to fourth ribs with right pneumothorax reduced to RM27,000; the award of RM18,000 for each of the closed fracture of scapula and ACJ disruption reduced to RM15,000 each; and the award of right eye subconjunctival haemorrhage with diplopia reduced to RM19,500 from RM22,000. The court revised the awards of the trial judge in the interest of justice for both parties, and to ensure that the quantum awarded was fair, reasonable and bearing in mind the injuries, and the pain and suffering of the plaintiff (see paras 12–13, 15, 18 & 21–22).

[Bahasa Malaysia summary

Responden telah memfailkan tuntutan terhadap perayu-perayu bagi ganti rugi am, ganti rugi khas, faedah dan kos akibat daripada kecederaan yang dialami

semasa kemalangan berlaku di antara responden, semasa menunggang motorsikalnya, dan perayu pertama, semasa memandu teksi. Hakim mahkamah sesyen telah memutuskan bahawa liabiliti perayu-perayu adalah 100%, dan kuantum bagi ganti rugi am adalah sebanyak RM203,000, kos untuk pembedahan masa hadapan adalah sebanyak RM11,667, dan kesakitan dan penderitaan bagi pembedahan masa hadapan adalah sebanyak RM5,000. Tidak puas hati dengan keputusan tersebut, perayu memfailkan rayuan ini.

Diputuskan, menolak rayuan perayu-perayu atas liabiliti dan membenarkan sebahagian rayuan perayu atas kuantum bagi ganti rugi am:

(1) Mempertimbangkan fakta bahawa kecederaan hanya adalah 4% daripada jumlah kawasan permukaan badan, award sebanyak RM60,000 bagi bahagian bahu kanan dan luka geseran rusuk terbakar (jumlah kawasan permukaan badan ('TBSA') 4%) dengan kecacatan dikurangkan kepada RM40,000 oleh mahkamah. Bergantung ke atas Compendium of Personal Injury Awards, dikemaskini pada 17 April 2014, mahkamah memerintahkan bahawa award sebanyak RM30,000 bagi tulung rusuk kedua hingga keempat sebelah kanan dengan pneumotoraks kanan dikurangkan kepada RM27,000; award sebanyak RM18,000 setiap satu bagi kecederaan patah tulang tertutup tulang belikat dan masalah ACJ dikurangkan kepada RM15,000 bagi setiap satu kecederaan; dan award pendarahan subkonjunktiva mata kanan dengan diplopia dikurangkan kepada RM19,500 daripada RM22,000. Mahkamah menyemak semula award-award hakim perbicaraan demi keadilan bagi kedua-dua pihak, dan untuk memastikan bahawa kuantum yang diawardkan adalah adil, munasabah dan mengambil kira kecederaan, dan kesakitan dan penderitaan plaintif (lihat perenggan 12–13, 15, 18 & 21–22).]

Notes

For cases on claim for damages, see 12(2) *Mallal's Digest* (5th Ed, 2015) paras 2294–2295.

Cases referred to

Kanan a/l Vathumalea lwn Kartikgeyen a/l Raja [2015] MLJU 666; [2015] 1 LNS 1001, HC (refd)

Sivalingam a/l Periasamy v Periasamy & Anor [1995] 3 MLJ 395; [1996] 4 CLJ 545, CA (refd)

Wee Lian Construction Sdn Bhd v Ingersoll-Jati Malaysia Sdn Bhd [2010] 3 MLJ 425; [2010] 4 CLJ 203, CA (refd)

Thirugnanam R (G Pereira & Assoc) for the appellants.
Ranizan Abdullah (Ranizan Abdullah & Assoc) for the respondent.

Yeoh Wee Siam J:

ENCLOSURE 1

[1] Enclosure 1 is the notice of appeal ('appeal') filed by the appellants/defendants ('the defendants') appealing the decision of the learned sessions judge ('sessions court' or 'trial judge') given on 26 January 2016 in respect of liability and quantum, where the trial judge had decided that the liability of the defendants is 100%, and the quantum for general damages is RM203,000, costs of future surgery is RM11,667, and pain and suffering for future surgery is RM5,000.

BACKGROUND FACTS

[2] The plaintiff/respondent ('the plaintiff') is the rider of motorcycle bearing registration No WYQ943 ('motorcycle').

[3] The first defendant is the driver of the motor taxi bearing registration No HWD3155 ('taxi'), and a servant/agent of the second defendant.

[4] The second defendant is the registered owner of the taxi.

[5] The plaintiff's claim against the defendants is for general damages, special damages, interests and cost resulting from injuries suffered during an accident which occurred on 3 August 2016 between the plaintiff, while riding his motorcycle, and the first defendant, while driving the taxi.

QUANTUM AWARDED BY THE SESSIONS COURT

[6] The quantum on general damages (based on 100% liability) awarded by the sessions court to the plaintiff has been summarised by learned counsel for the plaintiff in his submissions as follows:

NO	KECEDERAAN	JUMLAH AWARD
1.	Right 2nd–7th rib fracture with right pneumothorax dengan ketidakupayaan berikut: - Pain in the right chest on exertion; - Inability to sleep on the right side; - Inability to lift heavy weights;	RM30,000-00

2.	Closed fracture right scapula dengan ketidakupayaan berikut: - Pain in the right shoulder on exertion; - Stiffness of the right shoulder; - Easy fatiguability of the arm - Inability to lift heavy weights; - Inability to play badminton;	RM18,000-00
3.	Right shoulder and flank friction burn injury (TBSA 4%) dengan ketidakupayaan berikut:- Note: Total body surface area (TBSA) is an assessment of injury to or disease of the skin, such as burns or psoriasis.	RM60,000-00
4.	Split skin grafting;	RM20,000-00
5.	Right acromio-clavicular joint (ACJ) disruption dengan ketidakupayaan berikut:- - Easy fatiguability of the arm; - Stiffness of the right shoulder; - Inability to lift heavy weights; - Inability to play badminton	RM18,000-00
6.	Muscle wastings:- - 1cm wasting of the right arm; - 1cm wasting of the right forearm;	RM5,000-00
7.	Right eye subconjunctival haemorrhage with diplopia;	RM22,000-00
8.	Scars: - 6 cm laceration scar of the right knee; - 27 cm x 20 cm skin donor scars of the right thigh; - 28 cm x 35 cm scar, with undulating contour, extending over the apex of scapula over the right flank to the hip area. There is numbness of the back; - 6 cm x 2 cm dense scar over the anterior aspect of lower right arms; Note: There is itchiness on the scar sites and limitation of range to 90 degree of the right shoulder by scar contracture.	RM30,000-00
JUMLAH		RM203,000-00

DECISION GIVEN BY THE HIGH COURT

[7] On 15 August 2016, after hearing both parties, I gave the following decision on the defendants' appeal:

(1) I dismissed the appeal of the defendants regarding liability. The decision of the trial judge on 100% liability of the defendants is therefore affirmed;

(2) regarding quantum, I allowed the appeal of the defendants only in respect of the following awards on general damages (based on 100% liability):

(a) the award of RM60,000 for right shoulder and flank friction burn injury (TBSA 4%) with disabilities is reduced to RM40,000;

(b) the award of RM30,000 for right second to seventh ribs with right pneumothorax is reduced to RM27,000;

(c) the award of RM18,000 for each of the —
(i) closed fracture of scapula; and
(ii) ACJ disruption,
is reduced to RM15,000 each;

(d) the award of right eye subconjunctival haemorrhage with diplopia is reduced from RM22,000 (global) to RM19,500 (ie (1) RM3,000 + (2) RM16,500);

(3) the other parts of the awards by the trial judge on quantum, interests and costs are affirmed; and

(4) each party is to bear his own costs.

APPEAL BY THE PLAINTIFF AGAINST THE HIGH COURT'S DECISION ON QUANTUM

[8] On 10 November 2016 the plaintiff obtained leave of the Court of Appeal to appeal against my decision regarding the issue of quantum only.

[9] On 16 November 2016 the plaintiff filed his appeal regarding the above.

GROUNDS FOR DECISION

[10] It is settled law that an appellate court would not interfere with a decision of a trial judge unless the decision is plainly wrong, or the award given is a wholly erroneous estimate (see *Kanan a/l Vathumalea lwn Kartikgeyen a/l Raja* [2015] MLJU 666; [2015] 1 LNS 1001; *Sivalingam a/l Periasamy v Periasamy & Anor* [1995] 3 MLJ 395; [1996] 4 CLJ 545; and *Wee Lian Construction Sdn Bhd v Ingersoll-Jati Malaysia Sdn Bhd* [2010] 3 MLJ 425; [2010] 4 CLJ 203).

The award of RM60,000 for right shoulder and flank friction burn injury (TBSA

4%) with disabilities is reduced to RM40,000

[11] The disabilities for the above injury (which have been omitted in the above summary table in the plaintiff's submissions) are:

(a) candidiasis (fungal) infection over back;

(b) inability to sleep on the right side;

(c) contracture over the right axillary region; and

(d) limitation of range to 90 degrees of the right shoulder by scar contracture.

(see judgment of the trial judge in pp 17–19 of *RRT Perayu* (1)).

[12] Learned counsel for the defendants submitted a global figure of RM25,000 since the burn injury with scars is not permanent, but can be corrected through surgery. I reduced the award to RM40,000 which in my view would be a more reasonable estimate for corrective surgery for the burn injury and scars. This is taking into account the fact that the injury is on only 4% of the total body surface area (ie TBSA).

The award of RM30,000 for right second–seventh ribs with right pneumothorax is reduced to RM27,000

[13] I reduced this award based on the Compendium of Personal Injury Awards, revised as on 17 April 2014 (*RR* pp 267–297) ('Compendium').

[14] At p 10, the guideline in the Compendium suggests an award of RM3,500–RM4,500 for each rib, and at p 23, it suggests an award of RM5,500–RM6,450 for haemopneumothorax injury. The defendants submit that the award ought to be RM26,500.

[15] I hold the view that for each rib, the award should be the high figure of RM4,500. Since there are six ribs involved, the award should be RM4,500 x 6 = RM27,000. This amount of RM27,000 is still higher than the RM26,500 submitted by the defendants.

The award of RM18,000 for each of the:

(i) closed fracture of scapula; and

(ii) ACJ discruption,

is reduced to RM15,000 each

[16] At p 1, the Compendium suggests an award of RM11,000–RM19,000 for dislocation of the acromio-clavicular joint.

[17] The defendants submit that an award of RM25,000 be given since the injury is not serious in view of the stiffness and pain in the right shoulder.

[18] I am of the view that it is more reasonable and proper to adopt the middle figure of RM15,000 of the suggested award by the Compendium, instead of the RM18,000 awarded by the trial judge.

The award of right eye subconjunctival haemorrhage with diplopia is reduced from RM22,000 (global) to RM19,500

[19] At p 19, the Compendium suggests an award of (i) RM2,500–RM3,500 for haematoma to the eyes, and (ii) RM11,000–RM22,000 for diplopia.

[20] The defendants submit that a global award of RM13,500 be given for this injury.

[21] I am of the view that it would be more reasonable to give a global award of RM19,500 ie RM3,000 for (i), and RM16,500 for (ii). This is the middle figure of what is suggested by the Compendium.

CONCLUSION

[22] I revised the above awards of the trial judge in the interest of justice to both parties, and to ensure that the quantum awarded is fair, reasonable and bearing in mind the injuries, and the pain and suffering of the plaintiff.

[23] I affirmed the other parts of the awards granted by the trial judge as they are correct. Therefore, there was no good reason for me to interfere with those other awards.

[24] Based on the above considerations, I therefore order accordingly.

Appellants' appeal on liability dismissed; appellants' appeal on quantum for general damages allowed in part.

Reported by Dzulqarnain Ab Fatar